

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE UNDER 37 C.F.R. § 1.8

I hereby certify that the documents enclosed herein are being deposited with the United States Postal Service as first class mail on this 19th day of October, 2006 in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Carol D. Stemmler

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In re application of:)
Gilbertson et al.)
Serial No.: 10/821,711) Examiner: David H. Kruse
Filed: April 8, 2004) Group Art Unit: 1638
For: DNA Constructs and Methods to Enhance) Conf. No. 1699
the Production of Commercially Viable)
Transgenic Plants)

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT UNDER 35 USC §121

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

This paper is filed in response to the Office communication dated September 25, 2006. It is respectfully requested that the election below be entered with traverse and that the application be examined on the merits.

REMARKS

In the action dated September 25, 2006, the U.S. Patent and Trademark Office required restriction under 35 USC §121 from among the following groups:

I Claims 1-12 and 14-18, drawn to a DNA plasmid comprising a plant expression cassette comprising outside of the T-DNA borders, a plant cell non-lethal negative selectable marker gene, classified in class 435, subclass 320.1, for example.

II Claims 1, 5, 9, 13 and 19 drawn to a DNA plasmid comprising a plant expression cassette comprising outside of the T-DNA borders, a plant cell non-lethal negative selectable marker antisense construct, classified in class 536, subclass 24.5, for example.

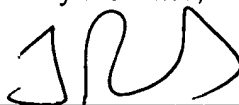
III Claims 20 and 22, drawn to a method for enhancing the selection of transgenic plants that do not contain vector backbone DNA, classified in class 435, subclass 468, for example.

IV. Claims 21 and 23, drawn to a transgenic plant, classified in class 800, subclass 300, for example.

Applicants elect Group I consisting of Claims 1-12 and 14-18 with traverse and respectfully request that the application be examined on the merits. Applicants believe that it would not create an undue burden on the Examiner to conduct a search encompassing all of the claims. Further, Applicants reserve the right to file divisional applications to further prosecute non-elected groups.

Should any questions arise or if Applicants or Applicants' attorney can facilitate the examination of this application, it is respectfully requested that the PTO contact the undersigned attorney.

Respectfully submitted,



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JFW

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TRANSMITTAL LETTER

Transmitted herewith are the following documents in the above-identified application.

- X Response to Election/Restriction Requirement Under 35 USC §121
- X Return Postcard
- X If an extension of time is required, but is not enclosed,
please consider this a conditional petition therefor and charge Deposit Account
13-4125 accordingly.
- X No fee is believed required with this filing.
- X Please charge any deficiencies or credit any overpayment to Deposit Account 13-
4125. A duplicate copy of this sheet is attached.

Respectfully submitted,

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